



## STATE BOARD OF LAND COMMISSIONERS

C. L. "Butch" Otter, Governor and President of the Board  
Ben Ysursa, Secretary of State  
Lawrence G. Wasden, Attorney General  
Donna M. Jones, State Controller  
Tom Luna, Superintendent of Public Instruction

George B. Bacon, Secretary to the Board

### Final Minutes Special Land Board Meeting November 5, 2008

A special meeting of the Idaho State Board of Land Commissioners was held on Wednesday, November 5, 2008 in Boise, Idaho. The meeting began at 10:05 a.m. in the second floor courtroom of the Borah Post Office building. The Honorable Governor C. L. "Butch" Otter presided. The following members were present:

Honorable Secretary of State Ben Ysursa  
Honorable Attorney General Lawrence Wasden  
Honorable Controller Donna Jones  
Honorable Superintendent of Public Instruction Tom Luna (via conference phone)

Secretary to the Board George Bacon was absent. Deputy Director Kathy Opp served as Secretary to the Board for this meeting.

#### • **CALL TO ORDER**

#### A. Purpose of this Meeting – **to take corrective action as a result of incomplete posting of the meeting notice and agenda of the Land Board meeting held on October 16, 2008**

##### 1. Letter and Memorandum from the Office of Attorney General

For the record, Attorney General Wasden stated that immediately prior to the October 16, 2008 Coeur d'Alene Land Board meeting he asked staff for assurance that the notice of the meeting had been properly posted. He was assured that it had been properly posted, and he stated he is confident that staff believed that to be the case. However, upon further inquiry it was determined that neither the meeting notice nor the agenda notice had been properly posted. There are a variety of methods in which meeting notice had been given, including public notices in September and subsequent notices on the Department of Lands' web site. He stated he understands that notices were also sent to the affected parties and to the media. However, the Idaho Public Records Act's general statutory requirement is a five-day meeting notice and a forty-eight hour agenda notice. Idaho Code § 67-2343 further provides that the notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.

Under the statutory language, the meeting notice and the agenda notice should have been posted at the principal office of the agency and that is at the Department of Lands. Unfortunately that did not occur. I would note that a public agency that holds meetings at regular intervals, at least once a month, may satisfy the meeting notice requirement by giving notice at least once each year.

The Public Records Act, Idaho Code § 67-2347, provides that if an action, or any deliberation or decisionmaking that leads to an action, occurs at any meeting which fails to comply with the provisions of the Public Records Act, those actions are null and void. Attorney General Wasden noted for the record that no complaint was filed by the media or by any member of the public. The matter came to the Board's attention internally. Out of an abundance of caution, Attorney General Wasden stated it is incumbent upon the Board to hold this special meeting to correct the actions taken at the meeting in Coeur d'Alene on October 16, 2008.

In addition, Attorney General Wasden noted that no fine or penalty is appropriate because under the facts of the matter, no member of the Land Board knowingly conducted or participated in a meeting which violated the provisions of the Idaho Open Meeting Law. This is so particularly in light of the language that the Idaho Supreme Court recently interpreted and defined for the term "knowingly."

Attorney General Wasden also reported that, in an embarrassing twist of fate, during the last few weeks in conjunction with the Idahoans' for Openness in Government, of which Secretary of State Ysursa is a member, he has been conducting extensive Idaho Open Meeting Law training for the media, local government and public. At each event he has disclosed the reason for this special meeting to let others know that even those with the best intentions sometimes make mistakes.

Deputy Director Opp informed the Board that to ensure compliance with Open Meeting Public notice requirements, the Department has instituted a checklist, and the completed checklist will appear at the front of meeting notebooks each month.

- **CONSENT**

**A motion was made by Controller Jones to move adoption of the Consent Agenda. Attorney General Wasden seconded the motion. The motion carried on a vote of 5-0.**

1. **Director's Report – *approved***

- A. Interest Rate on Department Transactions – October 2008
- B. Timber Sale Activity Report
- C. Timber Sale Official Transactions
- D. Legal Matter Summary
- E. Bureau of Surface and Mineral Resources, Official Transactions – August 2008
- F. Bureau of Real Estate, Official Transactions, Land Sale – August 2008
- G. Bureau of Real Estate, Official Transactions, Easement – August 2008
- H. Fire Settlement Information
- I. Final Fire Season Report

2. **Timber Sales – *Staffed by Roger Jansson, Operations Chief-North, and Kurt Houston, Operations Chief-South – approved***

<u>NORTH OPERATIONS</u>				<u>County</u>	<u>IDL Area Ofc</u>
A. Elk on the Run	CR-30-0530	7,800	MBF	Shoshone	St. Joe
B. Watson Gulch	CR-31-0012	4,010	MBF	Shoshone	Cataldo
<u>SOUTH OPERATIONS</u>					
C. Scattered Deer	CR-40-0791	4,210	MBF	Clearwater	Clearwater

**3. Lava Hot Springs Food Concession Lease – Staffed by Mark Lowe, Lava Hot Springs Foundation – *approved***

*DEPARTMENT RECOMMENDATION:* Approve the Lava Hot Springs Foundation Food Concession Lease and Direct the Lava Hot Springs Foundation to proceed with lease issuance.

*DISCUSSION:* Governor Otter asked if this type of lease is regularly reviewed by legal counsel. Deputy Attorney General Kay Christensen stated she has reviewed the lease. Governor Otter asked if the State has any secondary liability on this type of lease. Ms. Christensen stated the lease is structured to put the burden on the people building the structure. They are responsible for insuring it during construction. At the time the business begins operating, they assume all responsibility for liability, and the State is indemnified. Governor Otter asked if a certificate of insurance is required. Ms. Christensen stated yes. Governor Otter asked who retains ownership of the building. Ms. Christensen stated the State retains ownership. If at any time there is a default, from the time construction begins and during the twenty years of the lease, if they leave the premises for any reason, the State will step in and take over the improvements. The property itself does not change ownership. Governor Otter asked if a sublet is possible. Ms. Christensen stated further approval would be required before a sublet could occur.

*BOARD ACTION:* Approved.

**4. Minutes – *approved***

A. Regular Land Board Meeting – September 16, 2008

• **REGULAR**

**5. Endowment Fund Investment Board Manager's Report – Presented by Larry Johnson, Manager of Investments**

- A. Monthly Report
- B. Investment Report

Mr. Johnson stated the investment performance for the month of September was weak. The final loss for September was -8.3%, which is slightly better than the -8.6% shown in the briefing material. In reviewing information on other funds, public pension funds and endowments, the Fund's results are about average. Preliminary results for October are worse than September: -13.8% return for the month.

• **INFORMATION**

Deputy Director Opp provided background information. No Land Board action is required on the Information Agenda.

**6. Update on Marketing of Elk Valley Subdivision Lots – Staffed by Perry Whittaker, Strategic Business Analyst**

**7. General Fund Holdback – Staffed by Patrick Hodges, Division Administrator, Support Services**

**8. Fire Protection Exchange with Federal Agencies (Offset Agreement) – Staffed by David Groeschl, Assistant Director, Forestry and Fire**

*DISCUSSION:* Governor Otter asked if the State has authority under this agreement to neutralize potential fire hazards. Assistant Director David Groeschl, Forestry and Fire, stated currently offset acres are assessed based on cover type and the presence or absence of structures, and those

coefficients are agreed upon between the federal agencies and the states. In considering future assessments and other potential factors, management and whether fuel reduction work has occurred will be considered. However, he noted the difficulty with some factors is that even on managed lands sometimes fuel reduction work has not been completed, which could create a liability.

Governor Otter asked if discussions have taken place concerning preventative efforts on lands for which the State has responsibility. Assistant Director Groeschl stated the Department is engaged in those discussions with federal partners. In fact, as the next assessment cycle begins, the Department is discussing other factors that may need to be considered. It is still a cost effective way to get fire protection where state or private lands are intermingled with federal fire protection districts. Assistant Director Groeschl stated this adjustment is 800,000 value acres. At this time it is unclear how many acres that will include. The Department is considering slight adjustments to existing district boundaries to incorporate some low fire occurrence areas to make up the 800,000 value acres, but in the future other factors will be considered. He added that one of the bills currently before Congress is called the Good Neighbor Act, and that bill is an attempt to address issues of insect, disease and fuel reduction on federal lands adjacent to private or state lands; however, he noted that national laws sometimes make it difficult for states to respond quickly to those issues.

- **ADOPTION AND CORRECTION OF THE RECORD**

A motion was made by Attorney General Wasden to adopt the minutes of the October 16, 2008 meeting for which incomplete notice was given. This motion is to ensure that those proceedings are a proper part of the record of the Land Board. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

- 9. **Minutes from the October 16, 2008 meeting which was held without compliant posting of the meeting notice and agenda – approved**

At this time Attorney General Wasden commended Secretary of State Ysursa for a stellar job of reporting election results. He also complimented the Secretary of State's website reporting and gave a personal thank you to Secretary Ysursa for his work. Governor Otter concurred.

Secretary of State Ysursa expressed his appreciation for the comments of Attorney General Wasden and Governor Otter. He, in turn, recognized the County Clerks for their hard work in election night reporting. He stated the County Clerks did a "bang up job."

For the record, Attorney General Wasden noted that this discussion was not a deliberation because it was not a receiving or discussing of information that the Board would take an action on and therefore a posted notice was not necessary.

At 10:30 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code 67-2345(1)(f), to communicate with legal counsel to discuss the legal ramifications of and the legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. He requested unanimous consent of the members of the Board and that the vote be recorded in the minutes of the meeting. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0.

- **EXECUTIVE SESSION**

**A. Idaho Code 67-2345(1)(f) –** To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.

At 10:39 a.m. a motion was made by Attorney General Wasden to resolve into Regular Session. Controller Jones seconded the motion. The motion carried on a vote of 5-0. No action was taken by the Board during Executive Session.

Before adjournment, Attorney General Wasden stated on Monday of this week he and a number of his attorneys argued a case in front of the United States Supreme Court. Secretary of State Ysursa was the main defendant and appellant in the case. It is customary when you appear and make an argument before the United States Supreme Court that you receive a quill. At this time, Attorney General Wasden presented a quill from the United States Supreme Court to Secretary of State Ysursa.

There being no further business to come before the Board, at 10:40 a.m. a motion was made by Attorney General Wasden to adjourn. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 5-0. Meeting adjourned.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ C. L. "Butch" Otter

C. L. "Butch" Otter  
President, State Board of Land Commissioners and  
Governor of the State of Idaho

/s/ Ben Ysursa

Ben Ysursa  
Secretary of State

/s/ George B. Bacon

George B. Bacon  
Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the November 18, 2008 regular Land Board meeting.

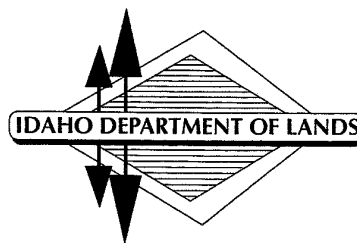
## **IDAHO STATE BOARD OF LAND COMMISSIONERS**

Governor C. L. "Butch" Otter, President of the Board  
Secretary of State Ben Ysursa  
Attorney General Lawrence G. Wasden  
State Controller Donna M. Jones  
Superintendent of Public Instruction Tom Luna

### **NOTICE OF PUBLIC MEETING**

## **STATE BOARD OF LAND COMMISSIONERS TO HOLD SPECIAL MEETING**

The State Board of Land Commissioners will hold a Special Meeting to take corrective action as a result of incomplete posting of the meeting notice and agenda of the Land Board meeting held on October 16, 2008 in order to fully comply with the Open Meeting Act, Idaho Code §§ 67-2340 et seq. (Idaho Open Meeting Law). The meeting will be held on Wednesday, November 5, 2008, in the second floor courtroom of the Borah Building, 304 North 8<sup>th</sup> Street, Boise. The meeting will begin at 10:00 a.m.



**George B. Bacon, Director and  
Secretary to the Idaho State Board of Land Commissioners  
300 North 6th Street, Suite 103, Boise, ID 83702**

First Notice Sent: 10-29-08

This notice is published pursuant to §67-2343 Idaho Code. For additional information regarding Idaho's Open Meeting laws, please see Idaho Code §§ 67-2340 through 67-2347.